

**APPROVAL:** President/CEO  
**APPROVAL:** Compliance Committee  
**APPROVAL:** Board of Directors  
**COMPLIANCE:** All Departments  
**REFERENCE:** Stark II, Phase III (72FR 51012) Effective December 4, 2007  
**REFERENCE:** Stark Law, 42 U.S.C. § 1395nn and implementing regulations  
**REFERENCE:** Personal Services Arrangements exception, 42 U.S.C. § 1395nn(e)(3); 42 C.F.R. § 411.357(d)  
**REFERENCE:** Rental of Equipment exception, 42 U.S.C. §1395nn(e)(1); 42 C.F.R. § 411.357(b)  
**REFERENCE:** Definitions of Immediate Family Members, 42 C.F.R. § 411.351  
**REFERENCE:** Fair Market Value exception, 42 C.F.R. § 411.357(1)  
**REFERENCE:** Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b)  
**REFERENCE:** Safe Harbor for Personal Services and Management Contracts  
**REFERENCE:** 42 C.F.R. § 1001.952(d)  
**REFERENCE:** AD1.0082 Contracts Administration  
**REFERENCE:** AD1.0119 Fair Market Value  
**PREPARER:** Legal Services  
Compliance

**SCOPE:**

This policy applies to Tomball Hospital Authority d/b/a Tomball Regional Hospital (“Tomball, Hospital or TRH”) and any other entity or organization in which Tomball or affiliate owns a direct or indirect equity interest of 50% or more.

**PURPOSE:**

The purpose of this policy is to provide direction regarding the negotiation and execution of professional services agreements between the Hospital Focus Arrangement Entities. The purpose of this policy is to also ensure compliance with the terms of the Corporate Integrity Agreement (“CIA”) dated July 23, 2007, and the CIA Amendment dated May 5, 2009, between Tomball Hospital Authority d/b/a Tomball Regional Hospital (the “Hospital”) and the Office of the Inspector General (“OIG”) of the Department of Health and Human Services.

**DEFINITIONS:**

1. “Physician” means a duly licensed and authorized doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.
2. “Focus Arrangement” means an arrangement between the Hospital and any Focus Arrangement Entity.  
“Focus Arrangement Entity” means any individual or entity that is in a position to make or influence health care business or referrals to the Hospital; or is a physician who is a member of the Hospital’s Medical Staff or is an immediate family member of a physician on the Hospital’s Medical Staff.

4. "Immediate family member" or "member of physician's immediate family" means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.
5. "Fair market value" is defined as the value in arms-length transactions, consistent with the compensation that would be included in a service agreement, as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party at the time of the service agreement. See also AD1.0119 Fair Market Value.

**POLICY:**

The Hospital may not enter into a professional services agreement unless the Hospital has an objectively determined, legitimate need for the services contemplated by the professional services agreement.

**PROCEDURE:**

The following criteria must be met in all Professional Services Agreements:

1. **Identify the Need for the Services:** The Hospital shall identify the specific need for the service to be rendered in order to promote quality, cost-effective care or fulfill other legitimate needs of the Hospital. The Hospital shall contract only for services **actually needed** by the Hospital. The Hospital shall not contract for services that are not required for the operation of the Hospital, or that regularly accompany the professional services being rendered by the physician or other professional, or that are required pursuant to the Hospital's Medical Staff Bylaws to be rendered by the physician without payment or that involve counseling or promoting activities that violate state or federal law. The President/CEO of the Hospital, or his/her designee, must document and justify the need for the services being requested. In addition, the value to the Hospital of each professional services agreement should be periodically assessed.
2. **Project the Number of Hours Required:** The Hospital may not enter into an agreement unless the Hospital has made an objective determination that the number of hours for the services contemplated by the agreement is reasonable and necessary to accomplish the Hospital's legitimate needs. The Hospital must base the number of hours reasonably necessary to discharge the services on:
  - (a) Any benchmarks referenced by legal authorities, government organizations, Hospital accreditation bodies, medical education program accreditation bodies, independent third-party consultants, third-party payers, or the Hospital's medical staff or governing board;
  - (b) Data from the logs; and/or
  - (c) Other factors, such as estimated hours determined by arms lengths

negotiations between the parties.

3. **Calculate Fair Market Value Compensation:** The Hospital should not enter into a professional service agreement unless it has objectively determined and documented that the remuneration being offered to the physician for the services is consistent with fair market value. See AD1.0119 Fair Market Value Policy.
4. **Review the Requirements of the Professional Services Agreement:** The Hospital shall confirm that the proposed agreement will meet all of the following terms to be included in the professional services agreement:
  - (a) The professional services agreement shall be evidenced by a written agreement contained in the Contract Management System and signed and dated by all parties. There shall be no oral or implied understandings that are not incorporated in the written agreement. If the physician is not affiliated with a group practice, the agreement shall be between the Hospital and the physician who will provide the services (the individual agreement). If the physician is an employee, independent contractor, partner, member, or is otherwise affiliated with a group practice, the agreement shall be among the Hospital and the group practice (the group practice) and the agreement shall identify the physician who will provide the services.
  - (b) The agreement shall specify with particularity the services to be rendered. The professional shall provide the Hospital with a completed activity log of the services, which have been rendered prior to each payment. This activity log should provide the level of detail of the services normally expected of an outside vendor of professional services. Such activity log will typically include the date of the service, a description of the services rendered and, if appropriate, to whom the services were rendered. All times noted on the activity log should be recorded when worked and not reconstructed at weekend, month-end, or other interval. If the written documentation is not received by Hospital, the payments will not be made. The Hospital reserves the right to deduct a predetermined percentage as outlined in the Agreement for the total amount owed to the physician for failure to timely submit his/her activity log. In addition, physicians will be encouraged to record and report all time worked pursuant to a professional services agreement. Any time that exceeds any applicable monthly cap per the Agreement will not be approved for disbursement.
  - (c) If the Hospital proposes entering into a group agreement, the group practice shall furnish the Hospital with a written representation and warranty that: (1) the compensation of each physician affiliated with the group including, without limitation, shareholders, members, partners, employees and independent contractors: (i) will be commercially reasonable and consistent with fair market value; and (ii) will not vary, or reflect or relate to, either directly or indirectly, the volume or value of patient referrals (actual or anticipated) to, or other business generated for, the Hospital; and (2) that the group practice agrees to comply with all

- relevant claims, submissions and billing laws and regulations.
- (d) The agreement shall set forth with specificity the entire services to be furnished. The designated duties shall not include: (1) advertising or marketing on behalf of the Hospital; (2) clinical duties for which a proposed focus arrangement entity is permitted to bill and retain payment from patients or third-party payers; (3) duties which a proposed physician is obligated to perform free of charge as a result of his or her licensure or medical staff membership, including, without limitation, attendance at meetings that the proposed physician is otherwise required to attend, such as regularly scheduled or mandatory medical staff or governing board meetings; (4) continuing medical education (unless approved by the Hospital's Legal Services and Compliance Departments); (5) review of medical journals and periodicals; (6) any entertainment activities; (7) completing time record; or (8) duties that involve the counseling or promotion of a business arrangement or other activity that violates any federal or state law. The designated duties shall be specific to the arrangement in question.
- (e) The term of the agreement should be for at least one (1) year. If the term is for less than one (1) year or if the agreement is terminated with or without cause prior to the end of the first year of the agreement, then the parties must not enter into a similar contract until the one-year term has passed. The agreement may be amended during this one-year term, subject to restriction. The agreement may be amended during its one-year term only if its core compensation is not altered or revised. In addition, Stark II, Phase III regulations allow for a holdover of a professional services agreement for up to six (6) months past the agreement's expiration date, as long as the parties continue to act in accordance with the expired agreement's terms and conditions.
- (f) The agreement shall not be conditioned on any focus arrangement entity: (1) making referrals to the Hospital; (2) being in a position to make or influence referrals to the Hospital; and (3) otherwise generating business for the Hospital; provided, however, that the agreement shall require that the proposed physician obtain and maintain active staff privileges at the Hospital.
- (g) The remuneration paid by the Hospital to any focus arrangement entity under the agreement shall take the form of a fixed monthly payment (which shall be subject to reduction or forfeiture pursuant to the conditions described in Section 8, and shall be a function of: (1) the projected hours to be provided by the professional; and (2) the hourly rate for discharge of the duties set forth in the agreement.
- (h) The remuneration paid by the Hospital to any focus arrangement entity under the agreement shall not vary (or be adjusted or renegotiated) in any manner based on the volume or value of any actual or expected referrals to, or business otherwise generated for, the Hospital by any focus arrangement entity.

- (i) No focus arrangement entity shall be precluded or restricted in any way from: (1) establishing staff privileges at any other hospital or facility; (2) referring patients to or utilizing the services of any other hospital or facility; or (3) otherwise generating business for any other hospital or facility.
  - (j) The agreement shall provide that remuneration shall not be paid by the Hospital to the focus arrangement entity (as appropriate) for a given payment period unless the professional furnishes adequate, contemporaneous documentation pursuant to Section 8 indicating that he or she fully discharged duties during the payment period.
  - (k) Each focus arrangement entity shall agree to treat in a nondiscriminatory manner patients receiving medical benefits or assistance under any federal health care program.
  - (l) Other than as specifically provided for in this policy, the remuneration shall not directly or indirectly benefit any individual or entity in a position to make or influence patient referrals to, or otherwise generate business for, the Hospital.
  - (m) A professional services agreement is considered a Focus Arrangement and shall contain all applicable provisions. The professional services agreement will require the physician and the group practice, if applicable, to abide by the Hospital's compliance obligations. Specifically, the physician and group will be required to have received, read, understood and abide by Hospital's Code of Conduct. The parties to the professional services agreement shall comply with Hospital's Compliance Program and its policies and procedures related to the Anti-Kickback Statute and Stark law. A summary of the Hospital's Compliance Program and the Hospital's policies and procedures shall be provided to the physician and group upon request. Further, the parties to the professional services agreement shall certify that they shall not violate the Anti-Kickback Statute and/or the Stark law. The physician and group, if applicable, shall complete any training required under the CIA and/or its Amendment.
5. **Obtain Legal Review and Approval.** No agreement shall be executed until the Hospital's Legal Services Department has reviewed and approved the proposed agreement to ensure compliance with the applicable laws and that all documents relevant to the proposed agreement are set forth in the Contracts Package. Prior to entering into a Professional Services Agreement, a Professional Services Agreement Checklist Form will be completed and entered into the Hospital's contract database; a copy of this form will also be maintained in the Legal Services Department. See Attachment "A," Professional Services Agreement Checklist Form. If any one or more of the following apply, the Legal Services Department shall also be required to complete a memo detailing the circumstances of the arrangement prior to the execution of the proposed agreement by the Hospital:
- (a) The physician or an immediate family member of the proposed physician agreement has entered into a different arrangement with the Hospital in the previous 12-month period;

- (b) An immediate family member of the proposed physician agreement is an active member of the Hospital's medical staff;
- (c) The agreement proposes an hours requirement in excess of 25 hours per month (excluding medical director arrangements for which federal or state law or regulation requires a greater number of hours per month); or
- (d) The remuneration set forth in the agreement exceeds the Fair Market Value analysis as set forth in Section 3.

All separate arrangements between the Hospital and the physician and/or the physician's immediate family members must incorporate each other by reference or cross-reference as a master list of contracts that is maintained and updated centrally and is available for review by the Secretary of the U.S. Health and Human Services upon request. No payments to physicians and/or the physician's immediate family members will be made without the signatures President/CEO, CFO, Assistant CFO, and the Compliance Officer

6. **Execute the Professional Services Agreement.** The Contracts Administrator shall submit the Contracts Package for review and approval. See Contracts Administration Policy; AD1.0082.
7. **Documenting the Services Prior to Payment.** Each contracted party shall be required to contemporaneously document his or her time spent performing the services. Each activity log will be carefully reviewed by an appropriate member of management in the Hospital to verify that the standards for completion of the activity log as set forth herein are met. Physicians must submit activity logs to appropriate Department Director for review and approval, then the Department Director shall forward the activity log to Compliance, Accounting and Administration for approval. No payments to physicians will be made without the signatures of the following: the President/CEO, CFO, Assistant CFO, and the Compliance Officer. In addition, no payments will be made to physicians without a properly approved activity log. A sample activity log is attached to this policy. See Attachment "B"– Professional Service Activity Log.

During the first three months of the initial term of the agreement, the director will review an education presentation that specifically addresses the services to be rendered and how to properly document service hours to the organization.

Only time that a physician spends on his or her service obligations under a professional service agreement shall be reimbursable, and all other time, including, but not limited to, time relating to the physician's private practice, shall not be reimbursable. The Hospital reserves the right to deduct a predetermined percentage as outlined in the Agreement for the total amount owed to the physician for failure to timely submit his/her activity log.

The Hospital shall not furnish any remuneration to a physician for any given month unless and until:

- (a) The physician legibly completes in all material respects the activity log applicable to such month;
- (b) The physician signs, dates and submits the activity log applicable to a given month by the last day of the succeeding calendar month;
- (c) The Department Director shall review the activity log for applicability of reported activities and originate a Referral Source Check Request (See WORD template – TRH Templates/Check Request Referral Source) form by completing the necessary information then signing and dating in the applicable area; and
- (d) The Hospital's President/CEO, CFO, Assistant CFO and the Compliance Officer shall review the activity log for completeness, legibility and overall compliance with the terms of the agreement and sign and date the Referral Source Check Request created by the Department Director.

A physician's failure to sign, date and submit his or her activity log applicable for a given month by the due date set forth in the agreement shall result in a forfeiture of compensation due for that particular month.

If, in any given month while a physician agreement is in effect, the physician provides fewer hours of services than the projected number of hours, then the physician or group practice (as appropriate) shall be compensated at the hourly rate for each hour of services provided as set forth in the agreement.

The CFO or his designee is responsible for ensuring that payments are recorded in accordance with Hospital's accounting policies and are charged only to accounts designated for such arrangements.

**ENFORCEMENT:**

Failure to adhere to the terms of this policy will be referred to the Hospital's Compliance Officer or his designee, the Legal Services Department and/or the appropriate administrator and shall result in appropriate human resources action up to and including termination. Failure to adhere to the terms of this policy will also be a factor in determining individual performance evaluations.

TOMBALL REGIONAL HOSPITAL  
SUBJECT: **PROFESSIONAL SERVICES AGREEMENTS**  
IMPLEMENTED: 03/06  
REVIEWED:  
REVISED: 03/08 07/09 04/10

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AD1.0071.0413      **PROFESSIONAL SERVICES AGREEMENTS**

**COMPLIANCE:**      All Departments

04/2010 no revisions to:  
AD1.0071Attach A-0413  
AD1.0071Attach B-0413

**ATTACHMENT "A"**  
**Legal Services Review Worksheet**  
**Personal Service Agreements/ Medical Directorships**  
Stark (42 CFR 411.357(d)), AKB (42 CFR 1001.952 (d))

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Name of Physician

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Title of Contract

**PURPOSE:** This checklist must be completed in its entirety prior to **execution** of the agreement by the physician or a physician group and Tomball Regional Hospital ("Hospital"). Once completed, this form and supplemental documentation will be maintained in the contracts database and the contract file in the Legal Services Department.

**Fair Market Determination:**

- \_\_\_\_\_ a. A full description of the methodology for determining the fair market value of financial agreement, as appropriate. A copy of the analysis will be attached to the contracts database.

The Agreement must have the following necessary terms and conditions:

- \_\_\_\_\_ a. A recital of the legitimate business purpose of the agreement
- \_\_\_\_\_ b. A delineation of the contracted services that are reasonable and necessary for the completion of the business purpose.
- \_\_\_\_\_ c. The projected number of hours required to perform the service.
- \_\_\_\_\_ d. The projected FMV compensation to be paid for the service.
- \_\_\_\_\_ e. The term of the agreement is for at least one (1) year, and if there is a termination during the first year, no new agreement will replace the existing agreement.
- \_\_\_\_\_ f. The financial agreement does not take into account the volume of value of any referrals or other business generated between the parties.
- \_\_\_\_\_ g. The agreement does not involve the promotion of illegal activities.
- \_\_\_\_\_ h. Individuals who meet the definition of a Covered Person shall comply with Tomball's Compliance Program, and methods to retrieve the Code of Conduct and Physician Agreement policies.
- \_\_\_\_\_ i. A certificate that the parties shall not violate the Anti-Kickback Statute and the Stark Law.
- \_\_\_\_\_ j. If the agreement has any of the following provisions, a Memo must be created and attached to the contracts database:
1. There is more than one director for the same department or service
  2. An immediate family member of the Medical Director has entered into an agreement within the past 12 months with the Hospital
  3. An immediate family member of the Medical Director is a member of the medical staff
  4. The Medical Director agreement proposes a requirement in excess of 25 hours per month.
  5. The remuneration set forth in the medical director agreement exceeds the Fair Market Value.

Copies of the following:

- \_\_\_\_\_ a. Criminal Background check for individual physician or all physicians if a group agreement;
- \_\_\_\_\_ b. OIG/GSA exclusion screening documentation for individual physician or all physicians if a group agreement;
- \_\_\_\_\_ c. Legal Name Verification (for groups or partnerships);
- \_\_\_\_\_ d. CV;

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- \_\_\_\_\_ e. Medical License; and
- \_\_\_\_\_ f. W-9.

\_\_\_\_\_  
Contract Administrator

\_\_\_\_\_  
Date



